

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LENSCRAFTERS, INC.; and EYEXAM OF
CALIFORNIA, INC.,
Plaintiffs,

v.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY; EXECUTIVE RISK SPECIALTY
INSURANCE COMPANY; UNITED STATES
FIRE INSURANCE COMPANY; MARKEL
AMERICAN INSURANCE COMPANY; and
WESTCHESTER FIRE INSURANCE COMPANY,
Defendants.

AND RELATED COUNTER- AND CROSS-
CLAIMS

Case No.: C-07-02853 SBA

**JOINT REPORT OF DISCOVERY
PLAN PURSUANT TO FED. R. CIV. P.
26(f)**

Conference Date: September 12, 2007

Time: 3:45 p.m.

Via Telephone

The Hon. Sandra Brown Armstrong

1 1. Pursuant to Federal Rule of Civil Procedure 26(f), counsel for the undersigned
2 parties met by telephone on August 14, 2007. The participants were:

- 3 • Celia M. Jackson, Esq., Heller Ehrman LLP, attorneys for plaintiffs and counter-
4 defendants LensCrafters, Inc. and EYEXAM of California, Inc. (together
5 “LensCrafters”);
- 6 • Alexander F. Stuart, Esq., Willoughby, Stuart & Bening, Inc., attorneys for
7 defendant and cross-defendant Liberty Mutual Fire Insurance Company;
- 8 • Terrence McInnis, Esq., Ross, Dixon & Bell LLP, attorneys for defendant and
9 cross-defendant Executive Risk Specialty Insurance Company;
- 10 • Robert D. Dennison, Esq., Harris, Green & Dennison, attorneys for defendant,
11 cross-claimant and cross-defendant Westchester Fire Insurance Company;
- 12 • Chip Cox, Esq., Long & Levit LLP, attorneys for defendant, cross-claimant and
13 cross-defendant Markel American Insurance Company; and
- 14 • Amy E. Rose, Esq., Squire, Sanders & Dempsey LLP, attorneys for defendant
15 and cross-defendant United States Fire Insurance Company.

16 2. Protective Order. The parties intend to negotiate a Stipulated Protective Order
17 relating, as necessary, to the production of confidential information, which will be submitted to the
18 Court shortly for approval and entry.

19 3. Rule 26(a)(1) Disclosures. Rule 26(a)(1) initial disclosures are currently due on
20 September 5, 2007. The parties have agreed, however, that they will exchange initial disclosures on
21 September 11, 2007, before the scheduled Case Management Conference. The parties agree to
22 amend their initial disclosures as required in a timely manner if the Court grants LensCrafters’
23 pending Motion To Amend Complaint, which is scheduled to be heard on October 2, 2007.

24 4. Discovery Plan. LensCrafters contends that discovery should begin in accordance
25 with the Federal Rules, which would permit discovery to commence after the filing of this
26 discovery plan on September 5. Defendants intend to ask the Court for a stay of discovery until
27 after it has ruled on U.S. Fire’s Motion To Dismiss or in the Alternative, Stay this Action, which is
28 scheduled to be heard on September 18, 2007. Defendants propose that the Court schedule a Case

1 Management Conference within ten days after the Court issues its ruling, prior to which the parties
2 will meet and confer about a discovery schedule and propose a more detailed Discovery Plan to the
3 Court at that conference, including a completion date for all discovery, including expert discovery.
4 The parties have, however, agreed to certain discovery provisions, as set forth below:

5 (a) Depositions. The parties agree that the provisions of the Federal Rules of Civil
6 Procedure shall govern with respect to the total number of depositions permitted in this action. All
7 parties reserve their rights to ask the Court to amend this Discovery Plan and conduct additional
8 depositions as necessary.

9 (b) Document Requests. The parties agree that the provisions of the Federal Rules
10 of Civil Procedure shall govern with respect to limits on requests for production of documents
11 permitted in this action. All parties have reserved their rights to ask the Court to amend this
12 Discovery Plan and conduct additional requests for documents as necessary.

13 (c) Other Discovery. The parties agree that other forms of discovery shall be
14 governed by the Federal Rules of Civil Procedure. All parties reserve their rights to ask the Court
15 to amend this Discovery Plan and limit discovery as necessary and appropriate.

16 (d) Subjects of Discovery. Discovery is contemplated on the following subjects:

17 (i) The *Snow* Action, including but not limited to issues related to liability, damages, and violations
18 of the California Confidentiality of Medical Information Act, Cal. Civ. Code § 56 *et seq*
19 (“COMIA”); (ii) discovery conducted in the *Snow* Action; (iii) the business practices of
20 LensCrafters that form the basis of the COMIA claims alleged in *Snow*; (iv) the underwriting of the
21 insurance contracts; (v) defendants’ investigation, claims handling and analysis of coverage of the
22 *Snow* Action; (vi) defendants’ coverage of other actions alleging COMIA or other privacy claims;
23 and (vii) any other subjects that the parties find relevant. Additionally, to the extent the Court
24 grants LensCrafters’ Motion To Amend, LensCrafters expects that it will conduct additional
25 discovery related specifically to claims regarding breach of the covenant of good faith and fair
26 dealing. All parties reserve their rights to object to discovery sought by any other party on all
27 grounds including but not limited to relevance and privilege.

28 (e) Completion Date. Plaintiffs propose that non-expert discovery be completed by

1 June 2, 2008. Defendants object that it is premature to set a completion date for non-expert
2 discovery at this time in light of the pending motion to dismiss this case and LensCrafters' motion
3 for leave to amend its complaint. Defendants propose that the parties suggest an appropriate
4 discovery completion date at the next case management conference, if necessary.

5 5. Other Items.

6 The parties hereto agree that extensions or amendments to the Discovery Plan may be made
7 only by order of the Court.

8 DATED: September 5, 2007

Respectfully submitted,

9 HELLER EHRMAN LLP

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11 By /s/ Celia M. Jackson

12 Celia M. Jackson

13 Attorneys for Plaintiffs
14 LENSRAFTERS, INC. and EYEXAM OF
CALIFORNIA, INC.

15 DATED: September 5, 2007

WILLOUGHBY, STUART & BENING, INC.

16
17 By /s/ Alexander F. Stuart

18 Alexander F. Stuart

19 Attorneys for Defendant
20 LIBERTY MUTUAL FIRE INSURANCE COMPANY

21 DATED: September 5, 2007

ROSS, DIXON & BELL, LLP

22
23 By /s/ Terrence R. McInnis

24 Terrence R. McInnis

25 Attorneys for Defendant
26 EXECUTIVE RISK SPECIALTY INSURANCE CO.

1 DATED: September 5, 2007

HARRIS, GREEN & DENNISON

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3
4 By /s/ Gary L. Green

Gary L. Green

5 Attorneys for Defendant

6 WESTCHESTER FIRE INSURANCE COMPANY

7 DATED: September 5, 2007

LONG & LEVIT LLP

8
9 By /s/ Chip Cox

Chip Cox

10 Attorneys for Defendant

11 MARKEL AMERICAN INSURANCE COMPANY

12 DATED: September 5, 2007

SQUIRE, SANDERS & DEMPSEY L.L.P.

13
14
15 By /s/ Amy E. Rose

Amy E. Rose

16 Attorneys for Defendant

17 UNITED STATES FIRE INSURANCE COMPANY